

April 19, 2012

William H. Stallings, Chief
Transportation, Energy and Agriculture Section
Antitrust Division, Department of Justice
450 Fifth Street NW., Suite 8000
Washington, DC 20530

RE: Comments on Proposed Settlement
*United States of America v. SG Interests I, Ltd., SG Interests VII, Ltd., and
Gunnison Energy Corporation*, Civil Action No. No. 12-cv-00395-RPM-MEH (DC
CO)

Dear Mr. Stallings:

As provided in the Federal Register, Volume 77, Number 36, pages 10775-10781, which was published on February 23, 2012, I would like to submit my comments to the proposed settlement of the antitrust activities and bid collusion engaged in by Gunnison Energy Corporation ("GEC") and SG Interests I, Ltd. and SG Interests VII, Ltd. (together, "SGI"). Specifically, I object to the proposed settlement on the following grounds:

1. The proposed settlement does not address the majority of the predatory and monopolistic activities that GEC and SGI have engaged in, and while the proposed settlement reserves the right for the Department of Justice ("DOJ") to pursue prosecution against GEC and SGI for antitrust activities not specifically settled by the proposed settlement, the failure by the DOJ to prosecute GEC and SGI for the antitrust activities beyond bid collusion has allowed GEC and SGI to continue those illegal activities; and
2. The proposed penalties and fines assessed against GEC and SGI are inadequate to keep GEC and SGI from further participating in antitrust activities.

The proposed settlement does not address the majority of the predatory and monopolistic activities in which GEC and SGI have engaged, and they are continuing to engage in antitrust activities.

The proposed settlement deals only with the antitrust activities engaged in by SGI and GEC relating to their collusion in bidding on federal leases. In addition to these activities, SGI and GEC have engaged in the following antitrust activities that are not addressed by the proposed settlement:

- a. As co-owners of the Ragged Mountain Pipeline and the Bull Mountain Pipeline, GEC and SGI have conspired to keep other producers in the vicinity of those pipelines from transporting their natural gas through the Ragged Mountain Pipeline and the Bull Mountain Pipeline. Because both the Ragged

Mountain Pipeline and the Bull Mountain Pipeline are located on public lands, they are required to be operated as common carriers under 30 U.S.C. § 185(r).¹

- b. By refusing to provide reasonable and non-discriminatory transportation for other producers' natural gas, GEC and SGI have tortuously interfered with the sale of other producers' interests in their leases, causing the sale of those leases to fail. In connection with one of those sales, GEC informed the intended purchaser of leases that they would be allowed a reasonable transportation rate only if the intended purchaser agreed to convey an interest in the leases being purchased to GEC.
- c. In the fall of 2008, GEC was demanding \$3.92/mcf to transport natural gas by non-owner producers through the Ragged Mountain Pipeline. By their own testimony, GEC and SGI admitted that at the same time they were charging themselves only \$0.11 to transport their own gas through each other's pipelines. Recently, GEC posted on their website that they would transport "non-owners" natural gas through the Ragged Mountain Pipeline for \$1.69/mcf, although the website does not disclose what they are charging themselves to transport their gas through the same pipeline. Notably, the price of natural gas is currently under \$2.00/mcf on the national markets, and is lower than that in Gunnison and Delta counties, Colorado, where GEC and SGI operate their pipelines. Upon information and belief, most pipelines in the area charge between \$0.35 and \$0.75/mcf to transport natural gas.
- d. Although SGI is required to operate the Bull Mountain Pipeline as a common carrier, they have repeatedly refused to transport other producers' gas through that pipeline, stating that the pipeline has not been

¹ Although the statute requires the "Secretary" to enforce the common carrier provisions, the Secretary of the Interior and the Secretary of Agriculture have been unable or unwilling to determine which "Secretary" was intended by Congress. Although we have been informed by officials in the Department of Interior that officials in the Bureau of Land Management are researching the issue, in the last six months those officials have refused to return ten phone calls requesting an update as to the status of that research. In light of the fact that the Secretary of the Interior is a friend of GEC and SGI officers and owners, and has hunted on their ranches (and SGI was the largest single largest campaign contributor to John Salazar, the brother of the current Secretary of the Interior when John Salazar was running for reelection as Colorado's U.S. Representative), I suspect that the refusal by the BLM to reach a decision on whether the Secretary of the Interior or the Secretary of Agriculture is the appropriate agency to enforce the common carrier provisions – and their refusal to actually enforce the statutes – is not an oversight.

completed. Upon information and belief, that pipeline has been transporting gas SGI's gas for more than a year now.²

- e. GEC and SGI have used their ownership and operatorship of the Bull Mountain Pipeline and the Ragged Mountain Pipeline, as well as their deep pockets³ to run other producers out of business and to try to take their leases for significantly less than for what they are worth. They successfully caused one producer to file bankruptcy and have halted all efforts in the bankruptcy case to sell that producer's leases to another party, all in an attempt to successfully obtain those leases at a below market price.

The proposed penalties and fines assessed against GEC and SGI are inadequate to keep GEC and SGI from further participating in antitrust activities.

GEC and SGI have engaged in monopolistic and predatory activities for a number of years, and have not stopped those activities even upon learning that the Department of Justice was investigating their antitrust activities (including the activities discussed above). Accordingly, I believe that the proposed penalties and fines are inadequate to enforce upon SGI and GEC that even they are not allowed to engage in antitrust activities. They have continued their antitrust activities, and the proposed fines and penalties are nothing more than a mere slap on the hand. Penalties and fines that cost them less than what it cost William Koch and Russell Gordy to purchase fuel for their private jets for less than a year are not going to impress upon them the fact that they must comply with the law.

Just as fining a person who refuses to pay a parking meter less than what it would cost for the man to pay the parking meter does not encourage that man to start

² In response to a complaint filed with the Federal Energy Regulatory Commission in 2009, SGI specifically claimed that they would operate the Bull Mountain Pipeline only as an uncompressed pipeline, and would not install a compressor on the pipeline except within five miles from its point of terminus. Contrary to those claims, SGI has interconnected the Bull Mountain Pipeline to the Ragged Mountain Pipeline and is using the Ragged Mountain Pipeline compressor station and processing facility, then rerouting the gas back into the Bull Mountain Pipeline. Despite repeated requests and twelve phone calls to FERC in the past eight months, FERC has refused to disclose whether they have questioned SGI as to the discrepancy in their testimony and their actions. FERC has refused to regulate the Bull Mountain Pipeline, and now it appears that GEC may be assuming operatorship of the pipeline according to GEC's website. <http://northforkvalleyproject.com/pipelines/bull-mountain-pipeline/overview/>

³ GEC is owned by William I. Koch, who was listed as the 88th richest billionaire in the United States in the March 2012 Forbes magazine and Russell Gordy was listed as the 56th largest landowner in the United States in the October 2011 AgBeat. The third company involved with SGI and GEC in the oil and gas properties in Gunnison and Delta Counties, Colorado – Falcon Seaboard Oil and Gas LP – also has an agreement not to bid against SGI and GEC, and is owned in part by a “blind” trust established by David Dewhurst, the Lieutenant Governor of the State of Texas. Although his interests are supposedly in a blind trust, on at least one occasion, in the fall of 2006, Lieutenant Gov. Dewhurst attended a meeting with the Forest Service on behalf of Falcon Seaboard Oil and Gas, LP.

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paying for the parking, fining SGI and GEC less than the amount that they can gain running the other producers out of business will not encourage SGI and GEC to comply with the antitrust laws. Accordingly, I respectfully object to the proposed settlement.

Sincerely,



Scott P. Thurner